

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.228 of 2016

1.Tara Devi, aged about 66 years, W/o Late Vishundeo Prasad Vishwakarma.
2. Krishandeo Prasad Vishwakarma, aged about 74 years, son of Late Raghunath Prasad, both resident of Mohalla Kamangar Gali, patna City, P.S Khajekalan, District- Patna, PIN- 800008.

... .. Appellant/s

Versus

1. Suresh Prasad Yadav, aged about 50 years,
2. Naresh Prasad Yadav, aged about 46 years,
3. Mahesh Prasad Yadav, aged about 42 years,

All sons of Late Ram Chandra Prasad Yadav, and all resident of mohalla Kamangar Gali, P.S. Khajekalan, District- Patna and at present residing in mohalla Neem Ghat, P.S. Khajekalan, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Binod Kumar Pandey, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 22-07-2019

Heard.

2. This miscellaneous appeal has been filed for setting aside the order dated 14.03.2016 passed by learned Sub-Judge-III, Patnacity in Tittle Suit No. 184 of 2010 by which the learned court has dismissed the petition filed by plaintiff appellant under Order 39 Rule 1 and 2 of C.P.C for grant of injunction.

3. Plaintiffs have filed suit for partition of joint family property claiming half share in the suit property fully described in schedule- 1 of the plaint which was purchased jointly by the father of parties.



4. Defendants have appeared and have stated in their written statement that there was oral partition between their father with respect to suit property, however, there is no memorandum of partition although said oral partition was acted upon and separate holding was created and separate holding tax is being paid and defendants are admittedly in possession over the suit property which were allotted to their share in said oral partition.

5. Previously two injunction petitions filed on behalf of plaintiffs/appellants was rejected as the trial court did not find any prima facie case made out for grant of injunction in favour of plaintiff/appellant. The trial court has further held that neither balance of convenience lies in favour of plaintiffs nor they will suffer any irreparable loss due to non-grant of injunction and rejected the injunction petition filed by plaintiffs/petitioners by order dated 14.03.2016. Plaintiffs are in possession of property allotted to them in said oral partition and they are enjoying the property of their share and trying to disturb defendants by making a false claim of jointness. The sale deed dated 27.01.2016 executed by defendants is from their own share. It has been further submitted that property in the schedule of the plaint is the property which was purchased by



father of parties in joint name and no other properties has been made subject matter of partition suit and said property has already been partitioned and both parties are in possession of their respective allotted share and they are making construction on the portion allotted to them in partition and same has already been mutated in their name and rent receipt is also being granted. There is no unity of title or unity of possession of the suit property.

6. After hearing the parties and considering the materials placed before it, the court below has found that no prima facie case of jointness is made out by the plaintiff and balance of convenience also does not lie in their favour and they are not going to suffer any irreparable injury due to non-grant of injunction and dismissed the injunction petition filed by plaintiff/appellant.

7. After hearing learned counsel and perusing the order as impugned passed by the trial court, this court does not find any infirmity, error, illegality or irregularity in the order passed by the court below as such is not inclined to interfere in the order passed by the court below. Accordingly, the present miscellaneous appeal is dismissed. However, it is made clear that present order is subject to final outcome of the Title Suit.



8. The trial court is directed to conclude the trial of the Title Suit pending before it within one year from the date of receipt/production of a copy of order passed by this Court.

9. This miscellaneous appeal is disposed of.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

